IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL.

Transfer Petition No. 23 of 2005

Javed Younus,
son of Sri Mohammad Younus,
resident of 71, Raiti Nasvandiyan,
Barielly. **…….Petitioner.**

V e r s u s.

1. United India Insurance Co. Ltd. through its Divisional Manager, Divisional Office – Tikonia, Nainital Road, Haldwani, District – Nainital.
2. Smt. Sabri, wife of Sri Samshul Rehman.
3. Smt. Habiban, wife of Sri Riyasat Hussain,
4. Hafijur Rehman, minor, son of Sri Samshul Rehman.
5. Samsulka, minor, son of Sri Samshul Rehman.
6. Altamiak, minor, son of Sri Samshul Rehman.
7. Mehroonisha, minor, D/o Sri Samshul Rehman.
8. Jaikumisha, minor, D/o Sri Samshul Rehman.

Respondents no. 4 to 8 through their mother and natural guardian, Smt. Sabri, wife of Sri Samshul Rehman i.e. respondent no. 2

Respondent no. 2 to 8, resident of village Manihar, Tanakpur, Tehsil – Sri Purnagiri, District – Champawat.

…….Respondents.

Hon'ble Rajesh Tandon, J.:

Heard Sri Lalit Belwal, learned counsel for the petitioner, Sri D.S. Patni, learned counsel for the respondent no. 1.

By means of this writ petition, the petitioner has prayed to transfer the cases MAC No. 14 of 2003 as well as the execution application and restoration application in the MAC No. 14 of 2003.

Briefly stated: Respondents no. 2 to 8 filed a claim petition under the provisions of Motor Vehicle Act 1988 before MACT, Champawat which was registered as MAC No.14 of 2005 (Smt. Sabri Vs. Javed Younus). The above noted case proceeded exparte against the petitioner and finally the judgment was passed in the case on 21.05.2005 for Rs. 2,23,000/- and further expanded the right to the insurance company to recover the same from the owner of the vehicle i.e. the petitioner. The Insurance Company has filed execution application, which is registered as Execution Case No. 11 of 2004 and the petitioner has filed objection against the execution application filed by the Insurance Company. The petitioner has also filed an application, which is registered as Misc. Case No. 22 of 2005 for setting aside the exparte decree dated 21.05.2005.

In view for the above, the transfer application being premature in view of the pendency of the restoration application. Once the restoration application against the award passed by the MACT concerned is already pending there is no occasion to transfer the matter to another district.

In view of the above, transfer petition is dismissed as premature at this stage.

(Rajesh Tandon, J.)

December 13, 2005
SKSharma